Ex Parte )
)
Earnest Lopez )

Affidavit of Debbie Jenkins

Before me personally appeared Debbie Jenkins, who, after being by me duly sworn, stated the following under oath:

1. My name is Debbie Jenkins. I am a Professor of Pediatric Nursing at Collin County Community College, McKinney, Texas. I received my Associate Degree of Nursing from Amarillo College in May 1979, my B.S.N. from West Texas State University in 1989, and my M.S.N. from West Texas A&M University in May 1994. I was credentialed as a sexual assault nurse examiner at Northwest Texas Hospital from 1991-1993, and employed on the Pediatric Unit as Nurse Manager of Pediatrics and Pediatric Intensive Care.

2. In April 2003, I received a telephone call from David Isern, an attorney for Ernest Lopez, who asked me to review the sexual assault photographs and examination report for Isis Vas. I understood that the case was already in trial when he called me. Mr. Isern wanted to know if the photographs showed sexual assault and, if so, when the assault occurred. He also wanted me to testify for them.

3. It is unusual to be asked to evaluate a case at such a late date. Such reviews typically take place many months before trial, which allows time for subsequent review of the medical history, lab reports and surrounding facts. In recent cases, I have been asked to review the file as soon as a possible assailant has been identified or charged.

4. Since I had practiced at Northwest Texas Hospital, I knew of Dr. Vas, and had met her on occasion. She was viewed by those who knew her (including Dr. Shelton) as negligent in the care of her children. While this did not have a direct bearing on whether the child had been sexually abused by a male babysitter, it did suggest that a thorough evaluation would be necessary before determining whether genital trauma was caused by sexual abuse or by general neglect, lack of sanitation, infection or other systemic illness.

5. After reviewing the photographs and the sexual assault examination report, I concluded that there was genital trauma, i.e., injury to the genital tissues. The cause of the trauma is unknown without a thorough medical history and examination as to the complete clinical state of the child. Presence of sperm would provide evidence of penile penetration. It is my understanding that sperm was not present in the evidence taken from the child. Trauma to the genital area may suggest sexual assault, but may also have other causes. A thorough medical examination and history should accompany any suspicion of sexual abuse or evidence of genital trauma. This is particularly important in the case of an infant

since, in an infant, the posterior fourchette is largely exposed, prone to inflammation (such as diaper rash), and may require cleaning in the course of childcare, e.g., if loose stool goes up into the genital area. As a nurse, I am not authorized to diagnose the various medical conditions that may cause genital trauma, but I can point out potential areas of concern through a thorough nursing assessment.

6. I am aware that there are sometimes misdiagnoses of sexual abuse. For example, after I left Northwest Texas Hospital, the media covered a case in which a nurse examiner at Northwest Texas Hospital diagnosed sexual abuse in a child who had been brought to the hospital with E. coli.

7. When Mr. Isern talked to me, he seemed to want me to testify that there was no genital trauma. I couldn't do that since it was obvious that there was trauma of some type. However, without the access to a thorough medical history of the child, I was unable to determine a definitive cause for the trauma. The infants' genital trauma could have been related to systemic illness or other causes. Such causes would have to be ruled out, and I would need much more information before I would conclude that sexual abuse had occurred.

8. In this case, I recall learning that the child had been ill during the previous week, but I was not given any specific information on her illness. In this context, I raised the possibility of sepsis (or widespread infection). Sepsis may have many sources, including E. coli. E. coli is found in stool and can be wiped up into the vaginal and urinary area if care is not taken in cleaning. If E. coli is found in the urinary tract and the child suffers systemic sepsis, the posterior fourchette may become very edematous, and friable (i.e., likely to bleed), and cleansing of the area may cause tears and/or bleeding.

9. Dehydration is another concern. Like sepsis, dehydration causes systemic changes that may cause or aggravate bleeding in various parts of the body, including the genital area.

10. I was concerned by the brown bruises shown on the sexual assault examination record. Since brown marks of 1 cm or less have been associated with fingertip marks, these bruises could be consistent with pre-existing physical abuse. I have recently been told, however, that the facial marks were originally described by the caretakers as raised and red, almost like blood blisters. If so, these could be petechiae or pupura (hemorrhages under the skin) from bacterial sepsis and/or E. coli. They may also suggest a bleeding disorder.

11. I have also recently been told that the child may have had black and/or bloody stool for several days before her death. Black stool, particularly black tarry stool, generally indicates bleeding from the upper gastrointestinal tract. This would suggest either abdominal injuries or gastrointestinal infection, which can lead to sepsis.

12. These are just a few of many conditions that may result in genital trauma that can be mistaken for sexual abuse. Since differentiating between sexual assault and other forms of genital trauma requires consideration of the complete medical record, including lab reports and clinical history, I could not determine the cause of the genital bleeding shown in the child's photographs. A complete evaluation of the medical record for possibilities other than sexual assault should be conducted by physicians and/or pathologists.

13. I did, however, identify several areas that should be explored. I told Mr. Lopez' attorneys that they needed to look at the medical record, including lab reports, to see if the child (1) had a diaper rash; (2) had been sitting in stool or urine; (3) had any type of viral diarrhea or gastroenteritis; (4) had any clotting abnormalities; and/or (5) had any symptoms suggesting infection, bacterial systemic sepsis or shock.

14. In general, once genital trauma has been identified, one must look at the genital findings in the context of the child's overall illness or injury, clinical history, and overall surrounding circumstances. As indicated, if there are signs of illness such as bacterial systemic sepsis, shock, dehydration or a bleeding disorder, other sources for the identified trauma may be identified. Similarly, if there has been a recent sexual assault in a child of this age, one would expect to see a significant amount of red blood on the child, the child's clothes, blankets, etc. The absence of external injuries and/or blood would suggest infection rather than sexual assault.

15. I have been asked whether the sexual assault exam itself can cause trauma or bleeding in the genitalia. The general answer is no: sexual assault exams are noninvasive and involve only gentle touching. A less-than-gentle sexual assault examination may, however, stir up bleeding. In addition, even a gentle examination may cause or aggravate bleeding in a child who already has infection, edema or inflammation in the genital area and/or a clotting disorder.

16. Michelle Gorday was employed as an E.R. nurse who took the SANE program training in the class after mine and precepted with me on several exams. Although we did a specific number of exams on children, there were relatively few cases involving infants less than 1 year of age. Since most perpetrators attempt not to physically hurt their victims so they won't be caught and can re-abuse, most of the children who are examined are verbal and have identified their perpetrators or given their caretaker cause for alarm. In infant cases, one must bear in mind both that reports of sexual assaults in infants are fewer in number than older children, and that infants may frequently have inflammation in the genital area caused by yeast infections, diaper rash, etc.

17. Mr. Isern also asked me for the likely time period in which the trauma occurred. If the trauma was caused by sexual assault, it was my opinion that the assault would most likely have occurred within 48 hours of the photographs since most genital injuries tend to heal within 2-3 days if minor in nature in a healthy child. If a sexual assault had occurred earlier (e.g., when the grandfather was looking after the child), it was my opinion that it would be surprising that the subsequent caregivers did not notice the trauma since one would expect quite a bit of bleeding, bruising, etc. in a child of this size. As I told Mr. Isern, there is no medical basis for concluding that an assault occurred within two hours of hospital admission.

18. If the genital trauma shown in the photographs was not caused by sexual assault, the timing issue would become largely irrelevant. In that case, the original genital bleeding could be caused by diaper rash, or other systemic illness. If the child developed a clotting disorder, bacterial systemic sepsis, or dehydration then bleeding or trauma could be exacerbated by cleansing of the area after stooling.

19. Because a diagnosis of sexual assault requires a complete review of the child's medical record, including lab tests and clinical history, in my experience, most attorneys obtain an independent review of the medical record before or near the beginning of the case. Since I was only asked to comment at the last minute and my role was limited to making suggestions on areas that should be explored with other experts, I did not charge for my time. I also have not charged for providing this affidavit.

This concludes my affidavit.

Debbie Jenkins

Subscribed and sworn to before me this 27th day of September, 2006.

LORI SHAY CAPELO
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MAY 17, 2008

Lori Shay Capelo
Notary Public in and for the
State of Texas

My commission expires: _____